APPEAL NO. 022586
FILED DECEMBER 2, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on September 4, 2002. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on November 6, 2001, with a three percent impairment rating (IR) pursuant to the certification of the Texas Workers' Compensation Commission-selected designated doctor and that he did not suffer disability during the period from November 6, 2001, through May 7, 2002. The claimant appealed and the respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant sustained a compensable injury on _____, when he jumped forward from a piece of equipment and landed on his foot tips and hand, "like a cat." Starting with his evaluation by his first treating doctor, it was clear that the claimant's primary pain was over his left shoulder. The first treating doctor noted that although there was neck pain, there was no neck injury by history. His cervical range of motion remained good, however, he had some pain radiating into his neck area from his shoulder. The first treating doctor pressed for a cervical MRI to rule out a possible herniation. On May 18, 2001, the claimant had an MRI of his cervical spine which showed changes of degenerative disc disease with mild bulges as described at C4-5 and C5-6, the report goes on to state "[o]therwise normal MR of the cervical spine without contrast." The claimant's medial history was complicated by diabetic peripheral neuropathy and EMG results consistent with many possible causes, including brachial plexus injury and possible thoracic outlet syndrome.

After a required medical examination (RME) doctor found that the claimant had at best a cervical strain, and had normal and full range of motion in his cervical spine, he assessed a zero percent IR. A designated doctor was appointed. On March 5, 2002, the designated doctor certified that the claimant reached MMI on November 6, 2001, with a three percent IR. The designated doctor, an M.D. who is board certified in occupational medicine, set out a history of the claimant's treatment, including the various opinions about the cause of the pain. He agreed that the MRI was essentially normal. To greatly summarize his evaluation, consisting of four and one-third pages of single-spaced report, the objective impairment that he found related to a brachial plexus stretch injury. He agreed with the RME doctor that MMI was reached on November 6, 2001, but determined it appropriate to rate the brachial plexus injury, which he did by using cervical nerve root tables to assess sensory loss. He concluded that the IR was three percent whole body.

On March 14, 2002, a letter of clarification was sent to the designated doctor after the claimant's attorney asserted that the designed doctor had "ignored" a cervical injury. On April 1, 2002, the designated doctor responded by stating, "I did consider the cervical injury but felt that there was no injury to the neck but rather to the brachial plexus." It is clear from reading the attorney's letter that he simply equated the existence of bulges on MRI with "an injury" caused by the claimant's accident, notwithstanding the attribution of this condition by the MRI evaluator, the first treating doctor, and the designated doctor to a degenerative condition. The designated doctor responded as to why the medical records and objective testing, considered with the mechanism of injury, led him to rate cervical nerve root as a brachial plexus injury and not an injury to the cervical spine.

The claimant's second treating doctor, a chiropractor, assigned an eight percent IR. The Report of Medical Evaluation TWCC-69 is without a narrative. While three percent was for upper extremity, the source of this was unexplained in terms of diagnosis. The second treating doctor also gave a five percent for the cervical spine which he said was for the bulging discs reflected on the MRI. However he attributed these findings to the accident sustained by the claimant was unexplained.

The hearing officer did not err in determining that the claimant reached MMI on November 6, 2001, with a three percent IR. Under the circumstances here, we cannot agree that the designated doctor's report represented a truncation of the extent of the claimant's injury, which was clearly complicated in this case. The designated doctor has not "ignored" a clearly determined cervical injury; rather, he evaluated what the objective basis for neck and shoulder pain was, as indicated by the medical records, tests, and mechanism of injury. It is impairment from a compensable injury upon which an impairment rating is based. Section 401.011(23); Section 408.122. The differing opinion of the second treating doctor does not constitute a great weight of contrary medical evidence that overcomes the presumptive weight to be accorded to the designated doctor's report. Section 408.122(c). We therefore affirm the hearing officer's findings and conclusions.

While there are medical records showing that the claimant was taken off work or had restrictions in early 2002 (after MMI was certified), some functional capacity evaluations also show the ability to work at the medium-duty level. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). While different inferences could be drawn, we cannot agree that the decision is so against the great weight and preponderance of the evidence so as to be manifestly unfair or unjust. We therefore affirm the decision and order on all appealed points.

The true corporate name of the insurance carrier is **FEDERATED MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

RUSS LARSEN
860 AIRPORT FREEWAY WEST, SUITE 500
HURST, TEXAS 75054-3286.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

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Thomas A. Knapp
Appeals Judge